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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 CARL A. WESCOTT,

11 Plaintiff,

12 v.

13 JIM UPSHAW, *et al.*,

14 Defendants.

CASE NO. 3:19-cv-05898-RJB

ORDER RENOTING *IN FORMA*
PAUPERIS APPLICATION,
DISMISSING PROPOSED
COMPLAINT WITHOUT
PREJUDICE, AND TO SUBMIT A
NEW PROPOSED COMPLAINT

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16 Plaintiff, who proceeds *pro se*, requests to proceed *in forma pauperis* (“IFP”) in this civil
17 matter alleging diversity jurisdiction. Pursuant to Amended General Order 02-19, the District
18 Court has referred plaintiff’s application to the undersigned.

19 Because plaintiff’s allegations are insufficient to establish that this Court has diversity
20 jurisdiction over the claims in plaintiff’s complaint, his proposed complaint is dismissed without
21 prejudice. If plaintiff wishes to proceed *in forma pauperis*, he must file a proposed amended
22 complaint that adequately states a claim on or before **November 22, 2019**.

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1 **BACKGROUND**

2 Plaintiff, who says that he is a resident of San Francisco County, California (Dkt. 1-2, at
3 1), and whose mailing address is in San Francisco, California (Dkt. 2), initiated this matter by
4 filing an IFP application, including a proposed complaint, on September 24, 2019. Dkt. 1.

5 Plaintiff's proposed complaint invokes the Court's diversity jurisdiction and seeks to
6 bring suit against four named defendants: HPA Mortgage, LLC ("a California LLC"), Chis
7 Patterson and Jim Upshaw (who plaintiff alleges are Washington residents), and Upshaw
8 Performance Systems, Inc. ("a Corporation in Port Townsend, Washington"). Dkt. 1-1, at 2.
9 Plaintiff also lists 25 John Doe defendants. Plaintiff states that he "is an individual who resided
10 in San Francisco, California for many years and is still in San Francisco." Dkt. 1-1, at 2.

11 Plaintiff states that he is an international real estate developer, that defendants had
12 invested approximately \$675,000 in one of plaintiff's properties in Ecuador, and that the
13 mortgage debt totaled more than \$3 million per defendants' accounting and was cross-
14 collateralized with a second property. *See* Dkt. 1-1, at 6. Plaintiff claims that after the primary
15 property's value dropped, he contracted with defendants' agent, acting on defendants' behalf, to
16 sell the second property to a third party—with defendants agreeing to "remove and reconvey the
17 mortgage"—in order to recoup some of the investors' losses. *See* Dkt. 1-1, at 8. However,
18 plaintiff alleges that defendants, through their agent, failed to honor their obligation to reconvey
19 the mortgage on the second property after it was sold. *See* Dkt. 1-1, at 10. Plaintiff further
20 alleges extortion and conversion by defendants' agent. *See* Dkt. 1-1, at 10. Based on these
21 allegations, plaintiff alleges breach of contract, promissory estoppel, conversion, tortious
22 interference with business expectancy, breach of the covenant of good faith and fair dealing, and
23 requests an accounting. *See* Dkt. 1-1, at 10–14.

1 The matter is before the Court to screen plaintiff's *in forma pauperis* application—
2 including his proposed complaint—under 28 U.S.C. § 1915(e).¹

4 DISCUSSION

5 Under 28 U.S.C. § 1915(e)(2), the Court is authorized to review the sufficiency of a
6 pleading when a plaintiff seeks to proceed *in forma pauperis*. Moreover, federal courts are under
7 a continuing duty to confirm their jurisdiction power and are “obliged to inquire *sua sponte*
8 whenever a doubt arises as to [its] existence. . . .” *Mt. Healthy City Sch. Dist. Bd. of Educ. v.*
9 *Doyle*, 429 U.S. 274, 278 (1977).

10 This Court is one of limited jurisdiction—meaning that it must have subject matter
11 jurisdiction over the claims alleged. Plaintiff invokes the Court’s diversity jurisdiction under 28
12 U.S.C. § 1332, which provides for “original jurisdiction of all civil actions where the matter in
13 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between
14 . . . citizens of different states.” 28 U.S.C. § 1332(a)(1). However, to proceed under the Court’s
15 diversity jurisdiction, plaintiff must allege complete diversity of the parties—that is, that “the
16 citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar, Inc.*
17 *v. Lewis*, 519 U.S. 61, 68 (1996).

18 A natural person’s citizenship for purposes of § 1332 is determined by his “state of
19 domicile”—that is, his “permanent home, where [h]e resides with the intention to remain or to
20 which [h]e intends to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).
21 Here, plaintiff’s allegations support that he is a “citizen” within the meaning of § 1332 of the
22

23 ¹ The Court notes that plaintiff has already filed a similar complaint in the Northern
24 District of California, which dismissed the matter for lack of subject matter jurisdiction. *See*
Wescott v. Upshaw, 19-cv-01640-KAW, 2019 WL 3255172 (N.D. Cal. June 12, 2019).

1 State of California—in his complaint, he states that he “resided in” California for many years and
2 is “still in San Francisco.” Dkt. 1-1, at 2.

3 Plaintiff also names an LLC defendant—“a California LLC.” Dkt. 1-1, at 2. “[A]n LLC
4 is a citizen of every state of which its owners/members are citizens.” *Johnson v. Columbia*
5 *Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Plaintiff does not identify all the
6 members of the LLC, but he does list one—defendants’ agent—who he states is a “licensed real
7 estate broker . . . in the State of California.” Dkt. 1-1, at 2.

8 Plaintiff’s allegations fail to establish diversity jurisdiction because he does not identify
9 the citizenship of each of the LLC’s members. Moreover, he specifically identifies one LLC
10 member—the agent—who appears to be a California “citizen” within the meaning of § 1332.
11 And to the extent that any other information is provided about the LLC’s unidentified members,
12 plaintiff alleges that the LLC is a California entity—thus, presumably, one with at least some
13 California members/owners.

14 “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be
15 able to allege affirmatively the actual citizenship of the relevant parties.” *Kanter*, 265 F.3d at
16 857. Here, plaintiff does not meet his burden to invoke diversity jurisdiction—indeed, the
17 allegations of his complaint appear to establish that this Court does not have diversity
18 jurisdiction.

19 This matter cannot go forward without plaintiff appropriately invoking the Court’s
20 jurisdiction. If plaintiff is able to allege diversity of citizenship, plaintiff is granted leave to
21 amend his proposed complaint.

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The Clerk shall update the docket to reflect dismissal of plaintiff's proposed complaint (Dkt. 1-1) without prejudice and shall refile plaintiff's IFP application (Dkt. 1) for **November 22, 2019**. Plaintiff shall submit a proposed amended complaint or otherwise comply with this Order on or before **November 22, 2019**. Failure to comply with the terms of this Order shall be deemed failure to prosecute and may result in the undersigned recommending dismissal of this matter without prejudice.

Dated this 21st day of October, 2019.

J. Richard Creatura
United States Magistrate Judge